

This record is a partial extract of the original cable. The full text of the original cable is not available.

UNCLAS ROME 001935

SIPDIS

DEPT FOR EB/CIP

COMMERCE FOR NTIA-CSPECK  
JUSTICE FOR ANTITRUST-CWILLNER

E.O. 12958: N/A

TAGS: [ECPS](#) [ETRD](#) [PGOV](#) [IT](#) [EUNJ](#)

SUBJECT: ITALY ENACTS CONTROVERSIAL MEDIA SECTOR REFORM  
BILL

Ref: A) 03 Rome 5557 B) 03 Rome 5639

1. Summary. President Ciampi signed the new text of the Berlusconi government's controversial media reform bill - known as the Gasparri Law - on May 4, after having rejected an earlier version on grounds of unconstitutionality (ref b). Critics argue that the law was designed exclusively to allow PM Berlusconi to legitimize his media holdings and to expand his empire. They maintain that the law is unconstitutional and say they will appeal to the Constitutional Court and, if necessary, to EU authorities. The GOI, on the other hand, insists that the law is innovative, will promote competition, and will encourage the adoption of new technology.

2. The Gasparri Law is based on the concept that the media/communications market is one broad sector. Under the law's provisions, no single operator will be able to receive more than 20 percent of overall revenues from the entire sector. In addition, the law establishes a new governing and management structure for the national network RAI (the state-owned radio and television broadcasting conglomerate) along with provisions that would allow for RAI's gradual privatization. End Summary.

-----  
A Broad Definition of the Media Sector  
-----

3. Although the bill was amended from the original version (ref A), the Gasparri Law still has the "SIC" (integrated system of communications) as one of its key elements. The SIC envisions the communications/media sector as one broad sector to include, but not be limited to, television and radio broadcasting, the press, and the Internet. The Gasparri law provides that no single operator may generate more than 20 percent of overall SIC revenues. An exception remains for former national telecom operator Telecom Italia (which owns TV station La 7), which is subject to a tighter ten percent cap on SIC returns. While the law allows cross-ownership in television and the press, entities that already own more than one national television station are not allowed to purchase newspapers prior to the end of 2010 (a two-year extension from the bill's original provisions).

4. The SIC is the most controversial aspect of the Gasparri law. Many claim that such a broad definition of the media/communications sector was designed exclusively to allow PM Berlusconi's media empire to expand further. Critics contend that it will be virtually impossible to measure and/or monitor the 20 percent cap. Even those who support the law concur that measuring the cap will be challenging (Note: the Communication Authority is tasked with monitoring overall SIC revenues). In addition, while the law does prohibit a company from establishing a dominant position in any individual market (for example television broadcasting), the definition of "dominance" appears to be very elastic and difficult to define.

-----  
Analog to Digital  
-----

5. The law's final version preserved the requirement that television broadcasting switch from analog transmission to digital by the end of 2006. Digital offers approximately five times greater transmission capacity than analog does. According to the GOI, in addition to better quality transmission, digital will encourage new market entrants, and thus make the sector more competitive and pluralistic.

6. This provision also has met with criticism. Some industry experts have argued that transferring to digital will require significant up-front investments and that certain technical difficulties (for example, the capacity of household antennas to receive digital) have been underestimated. Critics also have contended that digital does not inherently increase competition since such

channels are unlikely to offer significantly different content that could challenge the dominance of PM Berlusconi's Mediaset channels and the RAI channels.

17. RAI and Mediaset dominate the television market, each

owning three (for a total of six) of the eleven national channels. Italy's Constitutional Court had ruled that Mediaset had to give up one station - or otherwise convert it to a much less profitable satellite network - and that RAI's third channel had to survive without advertisement. Some argue that with the conversion to digital, Mediaset will not have to give up one channel, nor will RAI 3 have to go without advertisement. (RAI and Mediaset will now "only" own six out of expected 30-35 channels following "digitalization" and, thus, will no longer be dominant).

-----  
Privatization of State-Owned RAI  
-----

18. The Gasparri Law states that, within six months from its enactment, the first tranche of RAI shares would be auctioned. No single investor will be able to hold more than one percent of RAI. In addition, RAI will not be able to spin off company assets prior to January 1, 2006. RAI has also been mandated to use its public financing to provide more public service broadcasting. The completion of RAI's privatization is not specified in the law, but sector contacts believe this will be a long process, and that RAI will remain in public hands for the foreseeable future.

19. Other significant elements contained in the Gasparri Law include provisions relating to ownership of local television stations, protection of minors, and advertisement ceilings.

-----  
Market Implications  
-----

110. Government contacts have told us that the Gasparri Law is an innovative piece of legislation which promotes new media and communication technologies, provides opportunities for new entrants in the media sector, thus allowing greater pluralism, and is consistent with the Government's pro-market approach by envisioning the privatization of RAI.

111. Communications Ministry and regulatory officials have acknowledged that the law does affect a sector where PM Berlusconi has his most significant business interests. Nonetheless, they argued that the media sector was long overdue for a modernized legal and regulatory regime. In an oblique reference to the perceived "hand-out" to the Prime Minister, Communications Minister Gasparri, in a press interview, said that he would have liked to see the conflict of interest law approved prior to his media/communications reform law. Once the conflict of interest law is enacted, this will complete the legal framework of the media/communications sector, he stated. (Note: The conflict of interest bill is now with the Chamber of Deputies' Culture Commission after having been approved by the Senate).

112. Technical experts at Communications Authority and in industry said that the law does in fact promote technological changes and provides greater opportunities for new entrants. At the same time, they also underscored that existing actors, and PM Berlusconi's Mediaset in particular, are bound to make the most of the possibilities offered by the law. They also argued that the law "burdens" RAI with public service requirements that will make it less competitive with respect to Mediaset. Defining and measuring the SIC appeared to be of the greatest concern to these experts.

-----  
Comment  
-----

113. The Gasparri bill took two years to get through Parliament. Throughout the debate, political considerations have largely overshadowed the bill's technical merits. It will take considerable time to assess its real impact upon competition and fair play in the Italian market. End Comment.

SKODON